

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ **NOV 21 2016** ★

UNITED STATES OF AMERICA, )  
on behalf of its agency, the United )  
States Small Business Administration )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ELK ASSOCIATES FUNDING CORP., )  
 )  
Defendant. )  
 )

**LONG ISLAND OFFICE**

13 Civ. 1326-(LAW)

**ORDER PARTIALLY LIFTING THE JUDICIAL STAY  
AND INJUNCTION FOR A LIMITED PURPOSE**

THIS CAUSE came before this Court on the Motion of the United States Small Business Administration ("SBA") in its capacity as the court appointed receiver ("Receiver") for Elk Associates Funding Corp. ("Elk") for entry of an Order Lifting the Judicial Stay and Injunction for a Limited Purpose. The stay and injunction are imposed by Paragraph 7 and 8 of this Court's Order entered April 24, 2013 (the "Receivership Order"). The Receiver is requesting the stay be lifted for the limited purpose of authorizing the Receiver to commence and pursue a civil action for (1) breach of fiduciary duty, (2) waste of corporate assets, (3) aiding and abetting a breach of fiduciary duty, (4) conversion, (5) negligence and (6) any other applicable civil cause of action against the former officers and directors of Elk that approved, authorized or facilitated the advances from Elk to AmeriTrans that total over \$12 million in the aggregate and any other entities the Receiver finds are necessary to its civil action without further order of this Court.

As this Court has been duly advised as to the Receiver's belief and determination that it is the best interest of the Elk Receivership Estate to lift the judicial stay for a limited purpose;

**THE COURT FINDS THAT:**

(1) The Receiver is charged with investigating, liquidating, pursuing and preserving all claims and causes of action and assets of Elk; and

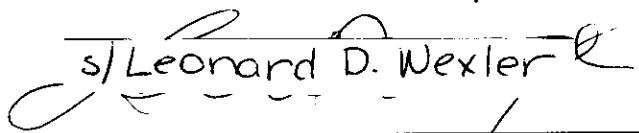
(2) The relief proposed by the Receiver in its Motion filed herein is reasonable and in the best interests of the Elk Receivership Estate.

**IT IS HEREBY ORDERED AND DECREED THAT:**

(1) The judicial stay and injunction previously imposed in this proceeding by Paragraph 7 of the Receivership Order is hereby lifted for the limited purpose of allowing the Receiver to commence and pursue a civil action for (1) breach of fiduciary duty, (2) waste of corporate assets, (3) aiding and abetting a breach of fiduciary duty, (4) negligence and (5) any other applicable civil cause of action against the former officers and directors of Elk that approved, authorized or facilitated the advances from Elk to AmeriTrans that total over \$12 million in the aggregate and any other entities the Receiver finds are necessary to its civil action without further order of this Court.

(2) In all other respects the judicial stay and injunction contained Paragraphs 7 and 8 of in the Receivership Order shall remain in full force and effect as to all other matters for which it has not previously been lifted, as applicable.

SO ORDERED this 21<sup>st</sup> day of November, 2016.

  
\_\_\_\_\_  
The Honorable Leonard A. Wexler  
United States District Court Judge